

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON,
AT SEATTLE

WESTERN NATIONAL MUTUAL
INSURANCE COMPANY, a foreign Insurer,

Cause No. 2:23-cv-1897

Plaintiff,

COMPLAINT FOR DECLARATORY JUDGMENT

VS.

BALAJI LOGISTICS INC., a Washington corporation,

Defendant.

I. PARTIES

1.1 Plaintiff Western National Mutual Insurance Company (hereinafter "Western National") is a foreign insurance company licensed to conduct business in the State of Washington. Western National is organized under the laws of Minnesota and has its principal place of business in Minnesota.

1.2 Defendant Balaji Logistics Inc. (hereinafter “Balaji Logistics”) is a Washington Corporation with its principal place of business in Washington.

COMPLAINT FOR DECLARATORY JUDGMENT - 1
USDC WD WA/SEA CAUSE NO. 2:23-cv-001897

SOHA & LANG, P.S.
ATTORNEYS AT LAW
1325 FOURTH AVENUE, STE 940
SEATTLE, WASHINGTON 98101
(206) 624-1800/Fax (206) 624-3585

II. JURISDICTION AND VENUE

2.1 This Court has subject matter jurisdiction under 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

2.2 Venue is proper in this Court under 28 U.S.C. § 1391 because the defendant resides in and a substantial number of the events or omissions giving rise to the claims occurred in the Western District of Washington.

2.3 This Court has the authority to determine the parties' respective rights and other legal obligations pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201. The dispute between the parties creates a justiciable controversy.

III. FACTS

A. The ACF Lawsuit

3.1 On or about July 27, 2023, Balaji Logistics filed an action captioned *Balaji Logistics Inc., dba Ponderosa Pacific v. ACF West Construction Company, Inc.*, King County Superior Court Cause No. 23-2-13883-0 SEA (hereinafter “ACF Lawsuit”), naming ACF West Construction Company, Inc. (“ACF”) as defendant.

3.2 On or about August 23, 2023, ACF filed counterclaims against Balaji Logistics.

3.3 ACF alleged that Balaji Logistics failed to pay ACF for ACF's work pursuant to a contract between Balaji Logistics and ACF, and was thus damaged in the amount of \$177,208.59 plus interest.

3.4 Western National is providing a defense under a full reservation of rights to Balaji Logistics under an insurance policy issued to Balaji Logistics for all claims alleged against it in the ACF lawsuit.

1 **B. The Balaji Logistics CGL Policy**

2 3.5 Western National issued policy CPP 1266050 to Balaji Logistics Inc., effective
3 from May 29, 2022 to May 29, 2023 (hereinafter “Balaji Logistics CGL Policy”). Ponderosa
4 Pacific Inc. was also a named insured listed on the Policy’s Named Insured Schedule.

5 3.6 The Balaji Logistics CGL Policy included Commercial General Liability
6 (hereinafter “CGL”) coverage, written on Form CG 00 01 04 13, with an occurrence limit of
7 \$1,000,000, a General Aggregate Limit (Other than Products-Completed Operations) of
8 \$2,000,000 and a Products-Completed Operations Limit of \$2,000,000.

9 3.7 The insuring agreement for Coverage A of the Balaji Logistics CGL Policy
10 includes the following language:

11 **SECTION I – COVERAGES**

12 **COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE
LIABILITY**

13 **1. Insuring Agreement**

14 a. We will pay those sums that the insured becomes legally
15 obligated to pay as damages because of “bodily injury” or
16 “property damage” to which this insurance applies. We will have
17 the right and duty to defend the insured against any “suit”
18 seeking those damages. However, we will have no duty to defend
19 the insured against any “suit” seeking damages for “bodily
20 injury” or “property damage” to which this insurance does not
21 apply. We may, at our discretion, investigate any “occurrence”
22 and settle any claim or “suit” that may result. But:

23 (1) The amount we will pay for damages is limited as
24 described in Section **III** – Limits of Insurance; and
25 (2) Our right and duty to defend ends when we have used up
26 the applicable limit of insurance in the payment of
27 judgments or settlements under Coverages **A** or **B** or
28 medical expenses under Coverage **C**.

29 No other obligation or liability to pay sums or perform acts or
30 services is covered unless explicitly provided for under
31 Supplementary Payments – Coverages **A** and **B**.

b. This insurance applies to “bodily injury” and “property damage” only if:

- (1) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”;
- (2) The “bodily injury” or “property damage” occurs during the policy period; and
- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no “employee” authorized by you to give or receive notice of an “occurrence” or claim, knew that the “bodily injury” or “property damage” had occurred, in whole or in part. If such a listed insured or authorized “employee” knew, prior to the policy period, that the “bodily injury” or “property damage” occurred, then any continuation, change or resumption of such “bodily injury” or “property damage” during or after the policy period will be deemed to have been known prior to the policy period.

3.8 The Coverage A Exclusions include the following:

2. Exclusions

This insurance does not apply to:

a. Expected or Intended Injury

“Bodily injury” or “property damage” expected or intended from the standpoint of the insured. This exclusion does not apply to “bodily injury” resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

“Bodily injury” or “property damage” for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an “insured contract”, provided the “bodily injury” or “property damage” occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an “insured contract”, reasonable attorneys’ fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages

1 because of “bodily injury” or “property damage”,
2 provided:

3 (a) Liability to such party for, or for the cost of, that
4 party’s defense has also been assumed in the same
5 “insured contract”; and
6 (b) Such attorneys’ fees and litigation expenses are
7 for defense of that party against civil or alternative
8 dispute resolution proceeding in which damages to
9 which this insurance applies are alleged.

10 * * *

11 **j. Damage To Property**

12 “Property damage” to:

13 (5) That particular part of real property on which you or any
14 subcontractors working directly or indirectly on your
15 behalf are performing operations, if the “property
16 damage” arises out of those operations; or
17 (6) That particular part of any property that must be restored,
18 repaired or replaced because “your work” was incorrectly
19 performed on it.

20 Paragraphs (3), (4), (5) and (6) of this exclusion for not apply to
21 liability assumed under a sidetrack agreement.

22 Paragraph (6) of this exclusion does not apply to “property
23 damage” included in the “products-completed operations
hazard”.

15 **k. Damage To Your Product**

16 “Property damage” to “your product” “arising out of it or any part
17 of it.”

18 **l. Damage To Your Work**

19 “Property damage” to “your work” arising out of it or any part of
20 it and included in the “products-completed operations hazard”.

21 This exclusion does not apply if the damaged work or the work
22 out of which the damage arises was performed on your behalf by
23 a subcontractor.

24 **m. Damage To Impaired Property Or Property Not Physically
25 Injured**

26 “Property damage” to “impaired property” or property that has
27 not been physically injured, arising out of:

- 1 (1) A defect, deficiency, inadequacy or dangerous condition
2 in "your product" or "your work"; or
3 (2) A delay or failure by you or anyone acting on your behalf
4 to perform a contract or agreement in accordance with its
5 terms.

6 This exclusion does not apply to the loss of use of other property
7 arising out of sudden and accidental physical injury to "your
8 product" or "your work" after it has been put to its intended use.

9 3.9 The Balaji Logistics CGL Policy includes the following definitions:

10 SECTION V – DEFINITIONS

11 * * *

- 12 3. "Bodily injury" means bodily injury, sickness or disease sustained by a
13 person, including death resulting from any of these at any time.
14 * * *
- 15 8. "Impaired property" means tangible property, other than "your product" or
16 "your work", that cannot be used or is less useful because:
 - 17 a. It incorporates "your product" or "your work" that is known or
18 thought to be defective, deficient, inadequate or dangerous; or
 - 19 b. You have failed to fulfill the terms of a contract or agreement; if
20 such property can be restored to use by the repair, replacement,
21 adjustment or removal of "your product" or "your work" or your
22 fulfilling the terms of the contract or agreement.
- 23 9. "Insured contract" means:
24 * * *
 - 25 f. That part of any other contract or agreement pertaining to your
26 business (including an indemnification of a municipality in
27 connection with work performed for a municipality) under which
28 you assume the tort liability of another party to pay for "bodily
29 injury" or "property damage" to a third person or organization,
30 provided the "bodily injury" or "property damage" is caused, in
31 whole or in part, by you or those acting on your behalf. However,
32 such part of a contract or agreement shall only be considered an
33 "insured contract" to the extent your assumption of the tort
34 liability is permitted by law. Tort liability means a liability that
35 would be imposed by law in the absence of any contract or
36 agreement [As amended by the **AMENDMENT OF INSURED
37 CONTRACT DEFINITION** endorsement.]

* * *

13. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

* * *

15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

16. “Products-completed operations hazard”:

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

(1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned. However, “your work” will be deemed completed at the earliest of the following times:

(a) When all of the work called for in your contract has been completed.

(b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.

(c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

b. Does not include “bodily injury” or “property damage” arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that

1 products-completed operations are subject to the General
2 Aggregate Limit.

3 17. "Property damage" means:

4 a. Physical injury to tangible property, including all resulting loss of
5 use of that property. All such loss of use shall be deemed to occur
6 at the time of the physical injury that caused it; or
7 b. Loss of use of tangible property that is not physically injured. All
8 such loss of use shall be deemed to occur at the time of the
9 "occurrence" that caused it.

10 For the purposes of this insurance, electronic data is not tangible
11 property. As used in this definition, electronic data means information,
12 facts or programs stored as or on, created or used on, or transmitted to or
13 from computer software, including systems and applications software,
14 hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing
15 devices or any other media which are used with electronically controlled
16 equipment.

17 * * *

18 21. "Your product":

19 a. Means:

20 (1) Any goods or products, other than real property,
21 manufactured, sold, handled, distributed or disposed of
22 by:
23 (a) You;
24 (b) Others trading under your name; or
25 (c) A person or organization whose business or assets
you have acquired; and
26 (2) Containers (other than vehicles), materials, parts or
27 equipment furnished in connection with such goods or
28 products.

29 b. Includes:

30 (1) Warranties or representations made at any time with
31 respect to the fitness, quality, durability, performance or
32 use of "your product"; and
33 (2) The providing of or failure to provide warnings or
34 instructions.
35 c. Does not include vending machines or other property rented to or
36 located for the use of others but not sold.

37 22. "Your work":

1 a. Means:

2 (1) Work or operations performed by you or on your behalf;
3 and
4 (2) Materials, parts or equipment furnished in connection
5 with such work or operations.

6 b. Includes:

7 (1) Warranties or representations made at any time with
8 respect to the fitness, quality, durability, performance or
9 use of "your work"; and
10 (2) The providing of or failure to provide warnings or
11 instructions.

12 3.10 The Balaji Logistics CGL Policy includes Form IL 01 23 11 13, Washington
13 Changes – Defense Costs, which provides:

14 **THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT
15 CAREFULLY.**

16 **WASHINGTON CHANGES – DEFENSE COSTS**

17 This endorsement modifies insurance provided under the following:

18 * * *

19 **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

20 A. The provisions of Paragraph B. are added to all Insuring Agreements that
21 set forth a duty to defend under:

22 1. Section I of the Commercial General Liability, Commercial
23 Liability Umbrella, Electronic Data Liability, Farm, Liquor
Liability, Owners And Contractors Protective Liability, Pollution
Liability, Products/Completed Operations Liability, Product
Withdrawal, Medical Professional Liability, Railroad Protective
Liability and Underground Storage Tank Coverage Parts, Auto
Dealers Coverage Form and the Farm Umbrella Liability Policy;

24 * * *

25 B. If we initially defend an insured ("insured") or pay for an insured's
26 ("insured's") defense but later determine that none of the claims
27 ("claims"), for which we provided a defense or defense costs, are
28 covered under this insurance, we have the right to reimbursement for the
29 defense costs we have incurred.

The right to reimbursement under this provision will only apply to the costs we have incurred after we notify you in writing that there may not be coverage and that we are reserving our rights to terminate the defense or the payment of defense costs and to seek reimbursement for defense costs.

3.11 The Balaji Logistics CGL Policy includes Form WN CG 24 26 04 13 –

Amendment of Insured Contract Definition, which provides:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE
READ IT CAREFULLY.**

AMENDMENT OF INSURED CONTRACT DEFINITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

* * *

The definition of “insured contract” in the Definitions section is replaced by the following:

“Insured contract” means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an “insured contract”;
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for “bodily injury” or “property damage” to a third person or organization, provided the “bodily injury” or “property damage” is caused, in whole or in part, by you or by those acting on your behalf. However, such part of a contract or agreement shall only be considered an “insured contract” to the extent your assumption of

1 the tort liability is permitted by law. Tort liability means a
2 liability that would be imposed by law in the absence of any
3 contract or agreement.

4 Paragraph **f.** does not include that part of any contract or agreement:

5 (1) That indemnifies a railroad for “bodily injury” or “property
6 damage” arising out of construction or demolition operations,
7 within 50 feet of any railroad property and affecting any railroad
8 bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
9 (2) That indemnifies an architect, engineer or surveyor for injury or
10 damage arising out of:
11 (a) Preparing, approving, or failing to prepare or approve,
12 maps, shop drawings, opinions, reports, surveys, field
13 orders, change orders or drawings and specifications; or
14 (b) Giving directions or instructions, or failing to give them,
15 if that is the primary cause of the injury or damage; or
16 (3) Under which the insured, if an architect, engineer or surveyor,
17 assumes liability for an injury or damage arising out of the
18 insured's rendering or failure to render professional services,
19 including those listed in (2) above and supervisory, inspection,
20 architectural or engineering activities.

C. The Balaji Logistics Umbrella Policy

3.12 Western National issued policy number UMB 1045000 01 to Balaji Logistics
4 Inc., effective May 29, 2022 to May 29, 2023 (hereinafter “Balaji Logistics Umbrella Policy”).

5 3.13 The Balaji Logistics Umbrella Policy was written on Form CU 00 01 04 13 and
6 had a Coverage A Limit of \$2,000,000 per occurrence, an Aggregate Limit for Liability
7 Coverage except with respect to covered autos of \$2,000,000, and a Retained Limit of \$10,000
8 for any one occurrence or offense.

9 3.14 The Balaji Logistics CGL Policy is listed on the Balaji Logistic Umbrella
10 Policy's Schedule of Underlying Insurance.

11 3.15 The insuring agreement for Coverage A of the Balaji Logistics Umbrella policy
12 includes the following language:

1 **SECTION I – COVERAGES**

2 **COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE
LIABILITY**

3 **1. Insuring Agreement**

4 a. We will pay on behalf of the insured the “ultimate net loss” in
5 excess of the “retained limit” because of “bodily injury” or
6 “property damage” to which this insurance applies. We will have
7 the right and duty to defend the insured against any “suit”
8 seeking damages for such “bodily injury” or “property damage”
9 when the “underlying insurance” does not provide coverage or
10 the limits of “underlying insurance” have been exhausted. When
11 we have no duty to defend, we will have the right to defend, or to
12 participate in the defense of, the insured against any other “suit”
13 seeking damages to which this insurance may apply. However,
14 we will have no duty to defend the insured against any “suit”
15 seeking damages for “bodily injury” or “property damage” to
16 which this insurance does not apply. At our discretion, we may
17 investigate any “occurrence” that may involve this insurance and
18 settle any resultant claim or “suit” for which we have the duty to
19 defend. But:

20 (1) The amount we will pay for the “ultimate net loss” is
21 limited as described in Section III – Limits Of Insurance;
22 and

23 (2) Our right and duty to defend ends when we have used up
24 the applicable limit of insurance in the payment of
25 judgments or settlements under Coverages A or B. No
other obligation or liability to pay sums or perform acts or
services is covered unless explicitly provided for under
Supplementary Payments – Coverages A and B.

26 b. This insurance applies to “bodily injury” or “property damage”
27 that is subject to an applicable “retained limit”. If any other limit,
28 such as a sublimit, is specified in the “underlying insurance”, this
29 insurance does not apply to “bodily injury” or “property damage”
arising out of that exposure unless that limit is specified in the
Declarations under the Schedule of “underlying insurance”.

30 c. This insurance applies to “bodily injury” and “property damage”
31 only if:

32 (1) The “bodily injury” or “property damage” is caused by an
“occurrence” that takes place in the “coverage territory”;

33 (2) The “bodily injury” or “property damage occurs during
the policy period; and

(3) Prior to the policy period, no insured listed under Paragraph 1.a. of Section II – Who Is An Insured and no “employee” authorized by you to give or receive notice of an “occurrence” or claim, knew that the “bodily injury” or “property damage” had occurred, in whole or in part. If such a listed insured or authorized “employee” knew, prior to the policy period, that the “bodily injury” or “property damage” occurred, then any continuation, change or resumption of such “bodily injury” or “property damage” during or after the policy period will be deemed to have been known prior to the policy period.

3.16 The Coverage A Exclusions include the following:

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

“Bodily injury” or “property damage” expected or intended from the standpoint of the insured. This exclusion does not apply to “bodily injury” resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

“Bodily injury” or “property damage” for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

(1) That the insured would have in the absence of the contract or agreement; or

(2) Assumed in a contract or agreement that is an “insured contract”, provided the “bodily injury” or “property damage” occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an “insured contract”, reasonable attorneys’ fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of “bodily injury” “or “property damage”, provided:

(a) Liability to such party for, or for the cost of, that party’s defense has also been assumed in the same “insured contract”; and

(b) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

* * *

m. Damage To Property

“Property damage” to:

- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs **(1)(b), (3), (4), (5)** and **(6)** of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph **(6)** of this exclusion does not apply to “property damage” included in the “products-completed operations hazard.”

n. Damage To Your Product

“Property damage” to “your product” arising out of it or any part of it.

0. Damage To Your Work

“Property damage” to “your work” arising out of it or any part of it and included in the “products-completed operations hazard”.

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

p. Damage To Impaired Property Or Property Not Physically Injured

“Property damage” to “impaired property” or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in “your product” or “your work”; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

1 3.17 The Balaji Logistics Umbrella Policy includes the following definitions:

2 **SECTION V – DEFINITIONS**

3 * * *

4 3. “Bodily injury” means bodily injury, disability, sickness or disease
5 sustained by a person, including death resulting from any of these at any
6 time. “Bodily injury” includes mental anguish or other mental injury
7 resulting from “bodily injury”.

8 * * *

9 8. “Impaired property” means tangible property, other than “your product”
10 or “your work”, that cannot be used or is less useful because:

11

- 12 a. It incorporates “your product” or “your work” that is known or
13 thought to be defective, deficient, inadequate or dangerous; or
- 14 b. You have failed to fulfill the terms of a contract or agreement;
15 if such property can be restored to use by the repair, replacement,
16 adjustment or removal of “your product” or “your work” or your
17 fulfilling the terms of the contract or agreement.

18

19 9. “Insured contract” means:

20

- 21 g. That part of any contract or agreement entered into, as part of
22 your business, agreement pertaining to your business (including
23 an indemnification of a municipality in connection with work
24 performed for a municipality) under which you assume the tort
25 liability of another party to pay for “bodily injury” or “property
26 damage” to a third person or organization. Tort liability means a
27 liability that would be imposed by law in the absence of any
28 contract or agreement [As amended by the **AMENDMENT OF**
29 **INSURED CONTRACT DEFINITION** endorsement.]]

30 * * *

31 13. “Occurrence” means an accident, including continuous or repeated
32 exposure to substantially the same general harmful conditions.

33 * * *

34 15. “Pollutants” mean any solid, liquid, gaseous or thermal irritant or
35 contaminant, including smoke, vapor, soot, fumes, acids, alkalis,
36 chemicals and waste. Waste includes materials to be recycled,
37 reconditioned or reclaimed.

38 17. “Products-completed operations hazard”:

1 a. Includes all “bodily injury” and “property damage” occurring
2 away from premises you own or rent and arising out of “your
3 product” or “your work” except:

4 (1) Products that are still in your physical possession; or
5 (2) Work that has not yet been completed or abandoned.
6 However, “your work” will be deemed completed at the
7 earliest of the following times:
8 (a) When all of the work called for in your contract
9 has been completed.
10 (b) When all of the work to be done at the job site has
11 been completed if your contract calls for work at
12 more than one job site.
13 (c) When that part of the work done at a job site has
14 been put to its intended use by any person or
15 organization other than another contractor or
16 subcontractor working on the same project.

17 Work that may need service, maintenance, correction, repair or
18 replacement, but which is otherwise complete, will be treated as
19 completed.

20 b. Does not include “bodily injury” or “property damage” arising
21 out of:

22 (1) The transportation of property, unless the injury or
23 damage arises out of a condition in or on a vehicle not
 owned or operated by you, and that condition was created
 by the “loading or unloading” of that vehicle by any
 insured; or
24 (2) The existence of tools, uninstalled equipment or
25 abandoned or unused materials;

26 18. “Property damage” means:

27 a. Physical injury to tangible property, including all resulting loss of
28 use of that property. All such loss of use shall be deemed to occur
29 at the time of the physical injury that caused it; or
30 b. Loss of use of tangible property that is not physically injured. All
31 such loss of use shall be deemed to occur at the time of the
32 “occurrence” that caused it.

33 19. “Retained limit” means the available limits of “underlying insurance”
34 scheduled in the Declarations or the “self-insured retention”, whichever
35 applies.

20. “Self-insured retention” means the dollar amount listed in the Declarations that will be paid by the insured before this insurance becomes applicable only with respect to “occurrences” or offenses not covered by the “underlying insurance”. The “self-insured retention” does not apply to “occurrences” or offenses which would have been covered by “underlying insurance” but for the exhaustion of applicable limits.

* * *

23. “Ultimate net loss” means the total sum, after reduction for recoveries or salvages collectible, that the insured becomes legally obligated to pay as damages by reason of settlement or judgments or any arbitration or other alternate dispute method entered into with our consent or the “underlying insurer’s” consent.

24. “Underlying insurance” means any policies of insurance listed in the Declarations under the Schedule of “underlying insurance”.

25. “Underlying insurer” means any insurer who provides any policy of insurance listed in the Schedule of “underlying insurance”.

* * *

27. “Your product”:

a. Means:

(1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

(a) You;

(b) Others trading under your name; or

(c) A person or organization whose business or assets you have acquired; and

(2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

(2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

28. “Your work”:

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SOHA & LANG, P.S.
ATTORNEYS AT LAW
1325 FOURTH AVENUE, STE 940
SEATTLE, WASHINGTON 98101
(206) 624-1800/FAX (206) 624-3585

1 a. Means:

2 (1) Work or operations performed by you or on your behalf;
3 and

4 (2) Materials, parts or equipment furnished in connection
5 with such work or operations.

6 b. Includes:

7 (1) Warranties or representations made at any time with
8 respect to the fitness, quality, durability, performance or
9 use of "your work"; and

10 (2) The providing of or failure to provide warnings or
11 instructions.

12 3.18 The Balaji Logistics Umbrella Policy includes Form IL 01 23 11 13,
13 Washington Changes – Defense Costs, which provides:

14 **THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT
15 CAREFULLY.**

16 **WASHINGTON CHANGES – DEFENSE COSTS**

17 This endorsement modifies insurance provided under the following:

18 * * *

19 **COMMERCIAL LIABILITY UMBRELLA COVERAGE PART**

20 A. The provisions of Paragraph B. are added to all Insuring Agreements that
21 set forth a duty to defend under:

22 1. Section I of the Commercial General Liability, Commercial
23 Liability Umbrella, Electronic Data Liability, Farm, Liquor
24 Liability, Owners And Contractors Protective Liability, Pollution
25 Liability, Products/Completed Operations Liability, Product
26 Withdrawal, Medical Professional Liability, Railroad Protective
27 Liability and Underground Storage Tank Coverage Parts, Auto
28 Dealers Coverage Form and the Farm Umbrella Liability Policy;

29 * * *

30 B. If we initially defend an insured ("insured") or pay for an insured's
31 ("insured's") defense but later determine that none of the claims
32 ("claims"), for which we provided a defense or defense costs, are
33 covered under this insurance, we have the right to reimbursement for the
34 defense costs we have incurred.

The right to reimbursement under this provision will only apply to the costs we have incurred after we notify you in writing that there may not be coverage and that we are reserving our rights to terminate the defense or the payment of defense costs and to seek reimbursement for defense costs.

3.19 The Balaji Logistics Umbrella Policy includes Form CU 24 30 04 13,

Amendment of Insured Contract Definition, which provides:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF INSURED CONTRACT DEFINITION

This endorsement modifies insurance provided under the following:

COMMERCIAL LIABILITY UMBRELLA COVERAGE PART

Paragraph 9. of the **Definitions** section is replaced by the following:

9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with **permission of the owner is not an “insured contract”**;
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your “employees”, of any “auto”. However, such contract or agreement shall not be considered an “insured contract” to the extent that it obligates you or any of your “employees” to pay for “property damage” to any “auto” rented or leased by you or any of your “employees”;
- g. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which

1 you assume the tort liability of another party to pay for “bodily
 2 injury” or “property damage” to a third person or organization,
 3 provided the “bodily injury” or “property damage” is caused, in
 4 whole or in part, by you or by those acting on your behalf.
 5 However, such part of a contract or agreement shall only be
 6 considered an “insured contract” to the extent your assumption of
 7 the tort liability is permitted by law. Tort liability means a
 8 liability that would be imposed by law in the absence of any
 9 contract or agreement.

10 Paragraphs f. and g. do not include that part of any contract or
 11 agreement:

- 12 (1) That indemnifies a railroad for “bodily injury” or “property
 13 damage” arising out of construction or demolition operations,
 14 within 50 feet of any railroad property and affecting any railroad
 15 bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- 16 (2) That pertains to the loan, lease or rental of an “auto” to you or
 17 any of your “employees”, if the “auto” is loaned, leased or rented
 18 with a driver; or
- 19 (3) That holds a person or organization engaged in the business of
 20 transporting property by “auto” for hire harmless for your use of
 21 a “covered auto” over a route or territory that person or
 22 organization is authorized to serve by public authority.

IV. ACTUAL AND JUSTICIABLE CONTROVERSIES

A. Balaji Logistics CGL Policy

14.1 There is an actual and justiciable controversy as to whether the claims in the
 15 ACF Lawsuit allege “bodily injury” or “property damage” within the Coverage A Insuring
 16 Agreement.

17.4.2 There is an actual and justiciable controversy as to whether the claims in the
 18 ACF Lawsuit allege an “occurrence” within the Coverage A Insuring Agreement.

19.4.3 There is an actual and justiciable controversy as to whether the claims in the
 20 ACF Lawsuit are excluded by Coverage A, Exclusion a.

21.4.4 There is an actual and justiciable controversy as to whether the claims in the
 22 ACF Lawsuit are excluded by Coverage A, Exclusion b.

1 4.5 There is an actual and justiciable controversy as to whether the claims in the
2 ACF Lawsuit are excluded by Coverage A, Exclusion j.5.

3 4.6 There is an actual and justiciable controversy as to whether the claims in the
4 ACF Lawsuit are excluded by Coverage A, Exclusion j.6.

5 4.7 There is an actual and justiciable controversy as to whether the claims in the
6 ACF Lawsuit are excluded by Coverage A, Exclusion k.

7 4.8 There is an actual and justiciable controversy as to whether the claims in the
8 ACF Lawsuit are excluded by Coverage A, Exclusion l.

9 4.9 There is an actual and justiciable controversy as to whether the claims in the
10 ACF Lawsuit are excluded by Coverage A, Exclusion m.

11 4.10 There is an actual and justiciable controversy as to whether Western National
12 has a right to reimbursement for all costs and fees expended in defense Balaji Logistics for the
13 claims alleged in the ACF Lawsuit.

14 **B. Balaji Logistics Umbrella Policy**

15 4.11 There is an actual and justiciable controversy as to whether the claims in the
16 ACF Lawsuit allege “ultimate net loss” in excess of the “retained limit” within the Coverage A
17 Insuring Agreement.

18 4.12 There is an actual and justiciable controversy as to whether the underlying
19 insurance does not provide coverage or the limits of underlying insurance have been exhausted.

20 4.13 There is an actual and justiciable controversy as to whether the claims in the
21 ACF Lawsuit allege “bodily injury” or “property damage” within the Coverage A Insuring
22 Agreement.

4.14 There is an actual and justiciable controversy as to whether the claims in the ACF Lawsuit allege an “occurrence” within the Coverage A Insuring Agreement.

4.15 There is an actual and justiciable controversy as to whether the claims in the Balaji Logistics Lawsuit are excluded by Coverage A, Exclusion a.

4.16 There is an actual and justiciable controversy as to whether the claims in the ACF Lawsuit are excluded by Coverage A, Exclusion b.

4.17 There is an actual and justiciable controversy as to whether the claims in the ACF Lawsuit are excluded by Coverage A, Exclusion m.5.

4.18 There is an actual and justiciable controversy as to whether the claims in the ACF Lawsuit are excluded by Coverage A, Exclusion m.6.

4.19 There is an actual and justiciable controversy as to whether the claims in the ACF Lawsuit are excluded by Coverage A, Exclusion n.

4.20 There is an actual and justiciable controversy as to whether the claims in the ACF Lawsuit, other than the Lateral Support Claims, are excluded by Coverage A, Exclusion o.

4.21 There is an actual and justiciable controversy as to whether the claims in the ACF Lawsuit are excluded by Coverage A, Exclusion p.

4.22 There is an actual and justiciable controversy as to whether Western National has a right to reimbursement for all costs and fees expended in defense of Balaji Logistics for all claims alleged in the ACF Lawsuit.

V. CLAIM FOR DECLARATORY JUDGMENT

5.1 Western National incorporates by reference and re-alleges the allegations contained in the preceding paragraphs.

1 5.2 Plaintiff Western National seeks a judicial declaration of rights and duties under
2 the Balaji Logistics CGL Policy and the Balaji Logistics Umbrella Policy pursuant to 28 U.S.C.
3 §§ 2201 and 2202.

4 5.3 Plaintiff Western National is entitled a declaratory judgment in its favor, namely
5 that it has no duty to defend or indemnify Balaji Logistics for the claims alleged against it in
6 the ACF Lawsuit.

7 **VI. CLAIM FOR REIMBURSEMENT OF DEFENSE COSTS INCURRED**

8 6.1 Western National incorporates by reference and re-alleges the allegations
9 contained in the preceding paragraphs.

10 6.2 Both the Balaji Logistics CGL Policy and the Balaji Logistics Umbrella Policy
11 contain the same endorsement entitled Washington Changes – Defense Costs, which provides:

12 **THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT
13 CAREFULLY.**

14 **WASHINGTON CHANGES – DEFENSE COSTS**

15 This endorsement modifies insurance provided under the following:

16 * * *

17 **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

18 A. The provisions of Paragraph B. are added to all Insuring Agreements that
19 set forth a duty to defend under:

20 1. Section I of the Commercial General Liability, Commercial
21 Liability Umbrella, Electronic Data Liability, Farm, Liquor
22 Liability, Owners And Contractors Protective Liability, Pollution
23 Liability, Products/Completed Operations Liability, Product
 Withdrawal, Medical Professional Liability, Railroad Protective
 Liability and Underground Storage Tank Coverage Parts, Auto
 Dealers Coverage Form and the Farm Umbrella Liability Policy;

24 * * *

25 B. If we initially defend an insured (“insured”) or pay for an insured’s
26 (“insured’s”) defense but later determine that none of the claims
27 (“claims”), for which we provided a defense or defense costs, are

1 covered under this insurance, we have the right to reimbursement for the
2 defense costs we have incurred.

3 The right to reimbursement under this provision will only apply to the
4 costs we have incurred after we notify you in writing that there may not
5 be coverage and that we are reserving our rights to terminate the defense
6 or the payment of defense costs and to seek reimbursement for defense
7 costs.

8 6.3 If this court determines that the claims alleged against Balaji Logistics in the
9 ACF Lawsuit are not covered under the Balaji Logistics CGL Policy and the Balaji Logistics
10 Umbrella Policy, Western National is entitled to reimbursement of any and all costs it has
11 incurred (after notifying said defendant in writing of its reservation of rights in this regard) in
12 defending each party that the Court determines is not entitled to a defense.

10 **VII. REQUEST FOR RELIEF**

11 WHEREFORE, Western National Mutual Insurance Company, having specifically
12 alleged the foregoing, requests the following relief:

13 1. For a determination of the rights and duties of the parties hereto under the
14 insurance policies;

15 2. For a declaration that Western National does not owe a duty to defend or
16 indemnify Balaji Logistics for all claims alleged against it in the ACF lawsuit;

17 3. For a declaration that Western National is permitted to withdraw from the
18 defense of Balaji Logistics for all claims alleged against it in the ACF Lawsuit;

19 4. For a declaration that Western National is entitled to reimbursement of all
20 defense costs incurred in defending Balaji Logistics from all claims alleged against it in the
21 ACF lawsuit;

22 5. For entry of judgment in the amount of defense costs incurred in defending
23 Balaji Logistics from all claims alleged against it in the ACF lawsuit;

6. For all interest as allowed by applicable law;
7. For attorney's fees and costs incurred in this lawsuit as allowed by applicable

8. For other and further relief as the Court deems just and equitable.

DATED this 11th day of December, 2023.

SOHA & LANG, P.S.

By: s/Paul Rosner

Paul Rosner, WSBA # 37146

Email address rosner@sohalang.com

s/Rachel Rubin

Rachel A. Rubin, WSBA # 48971

Email address rubin@sohalang.com

1325 Fourth Avenue, Suite 2000

Seattle, WA 98101-2570

Telephone: 206-624-1800

Facsimile: 206-624-3585

Attorneys for Plaintiff Western National Mutual
Insurance Company

COMPLAINT FOR DECLARATORY JUDGMENT - 25
USDC WD WA/SEA CAUSE NO. 2:23-cv-001897

SOHA & LANG, P.S.
ATTORNEYS AT LAW
1325 FOURTH AVENUE, STE 940
SEATTLE, WASHINGTON 98101
(206) 624-1800/FAX (206) 624-3585